

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 03/27/02 Item 3.i

STAFF REPORT

File Number
CP 01-08-072

Application Type
Conditional Use Permit

Council District
4

Planning Area
North San José

Assessor's Parcel Number(s)
237-10-229

PROJECT DESCRIPTION

Completed by: Jenny Nusbaum

Location: Easterly side of O'Toole Avenue approximately 200 feet southerly of Rincon Circle (2170 O'Toole Avenue)

Gross Acreage: 3.88

Net Acreage: 3.88

Net Density: n/a

Existing Zoning: HI-Heavy Industrial

Existing Use: 45 foot high Monopole with Wireless Communications Antennae

Proposed Zoning: No change

Proposed Use: 60 foot high Monopole with Wireless Communications Antennae

GENERAL PLAN

Completed by: JN

Land Use/Transportation Diagram Designation
Industrial Park

Project Conformance:
☐ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JN

North: Industrial

IP-Industrial Park

East: Freeway

N/A

South: Industrial

HI-Heavy Industrial and IP-Industrial Park

West: Industrial

HI-Heavy Industrial and IP-Industrial Park

ENVIRONMENTAL STATUS

Completed by: JN

☐ Environmental Impact Report
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JN

Annexation Title: Orchard #20-B

Date: August 21, 1958

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/DEVELOPER

DCG Investors 1993 L.P.
Attn: John Pedicini, President
275 Saratoga Avenue
Santa Clara, CA 95050-6664

Crown Castle International
Attn: Clarence Chavis
6620 Owens Drive
Pleasanton, CA 94588

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: JN

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memorandum from Fire Department.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The developer, Crown Castle International, is requesting a Conditional Use Permit to allow an increase in height of an existing monopole from 45 feet to 60 feet including relocation of existing wireless communication antennae to 60 feet. The subject 3.8-acre parcel is designated Industrial Park on the General Plan Land Use/Transportation Diagram and is located in the HI-Heavy Industrial Zoning District. Installation of wireless communications antenna is a conditional use in the HI-Heavy Industrial Zoning District.

The project site is located at 2170 O'Toole Avenue and is adjacent to industrial and warehouse uses and Interstate 880. Currently, a mini-storage facility is operating on the site. Crown Castle leases a mini-storage space at the end of a storage building row to house the associated computer and electrical equipment. The existing 45-foot monopole, as indicated on the plans, stands directly outside this storage space at the easternmost property line along the freeway and is visible from the freeway. Interstate 880 is designated as a Urban Throughway on the General Plan Transportation Diagram. The permit for the existing 45-foot-high monopole, File No. CP 00-05-027, was approved by the Planning Commission on August 30, 2000, with a 5-year time limit. If approved, the proposed application File No. CP 01-08-072 would replace this existing permit.

In 1996, Planning staff explored the issues of electromagnetic radiation to determine if emissions from the proposed antennae posed a public health hazard. Staff found that the low-frequency, low energy, non-ionizing emission associated with wireless communications antennae were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennae. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined the reported interference resulted from cordless telephones and not from antennae.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project, as conditioned, is exempt from further environmental review under the provisions of the California Environmental Quality Act, specifically under Section 15301 (Existing Facilities) of the State Guidelines for Implementation.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Industrial Park, and the 60-foot-high, freestanding monopole is within the General Plan 90-foot height limit for the subject site. However, the proposed monopole extension is not fully screened from Interstate 880, and therefore is not fully consistent with the General Plan's Urban Throughway designation (see discussion below).

ANALYSIS

The primary issues associated with this proposal are 1) consistency with the General Plan Urban Throughway designation, and 2) consistency with City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities.

The City of San Jose may allow installation of wireless communications antennae with a Conditional Use Permit to ensure such projects conform to City requirements and are compatible with the surrounding neighborhood. A five-year time limit is recommended as a condition of permit approval to allow reassessment of changes in technology that permit a reduction in the height of the proposed monopole, the "slimming" of an existing monopole, or the relocation of antennae to a more discreet building-mounted arrangement on a nearby commercial structure.

Urban Throughways

Urban Throughways are designated as scenic routes on the General Plan Scenic Routes and Trails Diagram. This designation includes all state and interstate highways that traverse through San Jose's Sphere of Influence. The General Plan indicates that landscaping in Urban Throughways should be used to supplement and enhance what exists on the adjacent land. Landscaping along these thoroughfares provides a foreground framework and also screens unsightly views or uncharacteristic land uses as seen from the freeway. Attractive Urban Throughways present a positive image for San Jose. Many of these thoroughfares are "gateways" to the City and should provide the best possible views of the urban environment.

The subject site is bounded to at the east by Interstate 880 and the existing monopole is currently partially visible from the Interstate. As illustrated in the photosimulation provided by the developer entitled, "View looking northwest from Interstate 880" (attached), the major portion of the existing 45-foot-high monopole is screened by landscaping in the Interstate 880 right-of-way, and there are some existing trees that are close to the height of the existing monopole. The photosimulation also shows that when the monopole height is increased by 15 feet to a new height of 60 feet, about half of the new monopole as will be seen from Interstate 880 is unscreened by existing landscaping. At 60 feet in height, the unscreened monopole becomes an obtrusive projection into the Interstate 880 view corridor. However, the extension of the existing monopole is preferable to a second monopole in the vicinity.

City Council Policy 6-20, Land Use Policy for Wireless Communication Facilities

As part of its Criteria for Siting Wireless Communication Antennas, *the Land Use Policy for Wireless Communication Facilities* states that freestanding monopoles should be located and designed to minimize public visibility. Where visibility cannot be avoided, additional landscaping or other visual amenities should be provided to compensate for the visual impact of the use. The applicant's proposal is inconsistent with the Council policy in that no additional landscaping is proposed by the applicant to minimize or offset visibility to the public from Interstate 880. As proposed, the plans do not include any new landscaping or other visual amenities to adequately compensate for the visual impact of the increased height of the monopole.

The proposal **is** consistent with the Council policy in that:

- a. The proposed monopole is set back from O'Toole Avenue by approximately 700 feet. This setback minimizes public visibility from O'Toole.
- b. The proposed monopole will be located no closer than the minimum required 50-foot set back from any residentially-designated parcel.
- c. The overall height of the monopole, including antennae, does not exceed 60 feet. The HI-Heavy Industrial Zoning District allows a maximum height of 45 feet, or allows a greater height subject to General Plan height policies. As previously stated, the General Plan height policies relevant to the subject site allow a maximum height of 90 feet.
- d. The project will not eliminate any required parking.

Visual Screening and offsetting improvements

To address the General Plan and Wireless Policy issues noted above, staff recommends as a condition of the proposed permit that the applicant plant four (4) California Redwoods of at least 24 inch box size in the area between the proposed monopole and Interstate 880, in order to better screen the monopole from the Urban Throughway view corridor. Staff also recommends a permit condition for the applicant to use a "slim-line" design for the proposed monopole to reduce the spread of the antennae mounted on the top so that no daylight is visible between the monopole and the antennae. With these additional project conditions, the visual impact of the increase in height will be off set, and the project can be found to be in conformance with the General Plan.

PUBLIC OUTREACH

A public hearing notice was mailed to the owners and tenants within 500 feet of the subject site and staff has been available to respond to any questions regarding the project.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit with the two additional conditions for additional landscaping and a "slim-line" design, and include the following findings and conditions in its Resolution:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Industrial Park on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the HI-Heavy Industrial Zoning District.
3. The Director of Planning has determined that this project is exempt from further environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA).
4. The project consists of increasing the height of an existing monopole from 45 feet to 60 feet, and relocation of wireless communication antennae to the height of 60 feet.
5. The City Council Wireless Communication Facilities Policy permits freestanding monopoles in areas designated Industrial Park on the General Plan.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project complies with all applicable provisions of the Zoning Ordinance.
2. The proposed project is in compliance with the California Environmental Quality Act.
3. The location of this monopole has been determined to be appropriate per the Wireless Communications Facilities Policy based on the limited options in this area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Plan Revisions.** Within 30 days of the issuance of this Permit and prior to recordation, the Applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 30 days shall cause this permit to automatically expire.
 - a. **Landscaping Plan.** Applicant shall submit a landscaping plan, showing the location of four (4) new California Redwood trees of at least a 24-inch box size, and other proposed landscaping to screen the monopole from the view of Interstate 880 to the satisfaction of the Director of Planning.
 - b. **Slim-line Pole Design.** Applicant shall use a "Slim-line" pole design that includes flush-mounting of the antennae so that no daylight is visible between the pole and antennae.
3. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
4. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Hwy 880/Montague, 2170 O'Toole Avenue, San Jose, CA 95131," dated August 23, 2001, and last revised March 12, 2002 on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Previous Permits.** This Permit replaces Permit File No. CP 00-05-027.
4. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
5. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
6. **Mechanical Equipment.** No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line.
7. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.

8. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
9. **Landscaping Mitigation.** Applicant shall plant four (4) 36-inch box California Redwood trees to aesthetically buffer the monopole from Interstate 880.
10. **Lighting.** This permit allows no on-site lighting except as specified on the approved plan set.
11. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
13. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
14. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
15. **Colors and Materials.** All wireless communications antennae colors and materials are to be those specified on the approved plan set.
16. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP 01-08-072, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
17. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San Jose Municipal Code on the site must be used and stored in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San Jose Fire Prevention Bureau.
18. **Enclosures/Screening.** Equipment shall be enclosed or screened to match existing walls, screening, or landscaping to the satisfaction of the Director of Planning.
19. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.

20. **Temporary Portable Generator Maximum Allowed Power Rating.** No temporary portable generator with a power rating greater than 50 horsepower shall be allowed on the subject site.
21. **Temporary Portable Generator Usage.** The hours of operation of the temporary portable generator shall be limited to a maximum of 100 hours per year.
22. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning, Building, and Code Enforcement of any proposals by other wireless communications providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this permit.
23. **Monopole Removal.** The applicant shall remove the monopole and associated equipment and enclosure from the site at such time as the pole is no longer used to support a wireless communication antenna.
24. **Maximum Height.** The monopole including wireless communication antennae shall not exceed sixty (60) feet in height.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date this Permit. At that time, that applicant/owner shall provide information to the City to determine if the monopole is still needed, based on improvements in technology or availability of alternative building-mounted opportunities in the vicinity.

Please note that this Conditional Use Permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning, Building and Code Enforcement. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

- c: Building Division (2); Engineering Services
DCG Investors 1993 L.P., Attn: John Pedicini, 275 Saratoga Ave., Santa Clara, CA 95050-6664
Clarence Chavis, Crown Castle International, 6620 Owens Drive, Pleasanton, CA 94588